

**\*E-Filed 5/5/09\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JAY RALSTON,

NO. C 08-0536 JF (RS)

Plaintiff,

**ORDER GRANTING MOTION  
TO COMPEL**

v.

MORTGAGE INVESTORS GROUP, INC., et al.,

Defendants.

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In this putative class action regarding the legality of adjustable rate mortgages, plaintiff Jay Ralston moves to compel Mortgage Investors Group, Inc. ("MIG") and Mortgage Investors Group (collectively "defendants") to provide further responses to the following categories of discovery: (1) information about the identity and involvement of non-parties or subsequent purchasers who determined what disclosures would be excluded or included in the loans defendants sold (document request numbers one and five, interrogatory numbers four and seven, and interrogatory (set two) numbers one, two, and three); and (2) loan information demonstrating that Ralston's claims are typical of those of other potential class members (document request numbers three and four). Defendants oppose Ralston's motion.

As an initial matter, defendants argue that the issue of bifurcation of class certification and merits discovery must be addressed prior to ruling on the requested discovery. Whether class discovery should proceed before class certification typically is addressed at a case management conference. The presiding judge, as part of case management, has not determined that merits

1 discovery must await a determination on class certification. Accordingly, no stay of merits  
2 discovery is warranted.

3 Defendants additionally represent that the documents to be produced are not relevant. Under  
4 the Federal Rules of Civil Procedure, parties may obtain discovery of any nonprivileged matter that  
5 is relevant to any party's claims or defenses, or "for good cause," discovery of any matter relevant to  
6 the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1). "Relevant information need not  
7 be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of  
8 admissible evidence." *Id.* The materials Ralston seek relate primarily to the identity and  
9 involvement of subsequent purchasers of loans MIG sold. Ralston also seeks information  
10 demonstrating that his claims are typical of those of other potential class members. The identity of  
11 the subsequent purchasers and the sample loan files, including the loan rates, therefore, are related to  
12 his individual and class claims, and should be produced.<sup>1</sup>

13 Defendants further contend that the need for the requested materials is outweighed by the  
14 potential invasion of a borrower's privacy. To the extent that such privacy interests are implicated  
15 by the pending requests, those interests can be protected adequately by redacting identifying private  
16 information, such as names, addresses, and social security numbers. Moreover, stipulated  
17 protective orders routinely strike the balance between the protection against improper use of private  
18 information and the need to exchange relevant materials. Finally, defendants maintain that  
19 producing the requested materials would be burdensome. Defendants, however, have not made such  
20 a showing beyond invoking the objection. Accordingly, Ralston's motion to compel is granted.  
21 Defendants shall produced the requested materials within twenty days of the date of this order.  
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26 <sup>1</sup> Defendants originally contended that because there was no operative pleading in  
27 effect, the motion to compel must be denied. Defendants suggested that without an operative  
28 pleading there was no logical or efficient way for them to determine the relevancy of requested  
documents. On April 15, 2009, however, Ralston filed his second amended complaint rendering this  
argument moot.

IT IS SO ORDERED.

Dated: 5/5/09

  
RICHARD SEEBORG  
United States Magistrate Judge